

NW., Room 4041, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-38, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

#### List of Subjects in 48 CFR Parts 6, 8, 15, and 52

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 6, 8, 15, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 6, 8, 15, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### PART 6—COMPETITION REQUIREMENTS

■ 2. Amend section 6.302-2 by revising paragraph (d) to read as follows:

##### 6.302-2 Unusual and compelling urgency.

\* \* \* \* \*

(d) *Period of Performance.* (1) The total period of performance of a contract awarded using this authority—

(i) May not exceed the time necessary—

(A) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(B) For the agency to enter into another contract for the required goods and services through the use of competitive procedures; and

(ii) May not exceed one year unless the head of the agency entering into the

contract determines that exceptional circumstances apply.

(2) The requirements in paragraph (d)(1) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

(3) The determination of exceptional circumstances is in addition to the approval of the justification in 6.304.

(4) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

#### PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

##### 8.703 [Amended]

■ 3. Amend section 8.703 by removing “<http://www.abilityone.gov/jwod/PL.html>” and adding “<http://www.abilityone.gov/index.html>” in its place.

#### PART 15—CONTRACTING BY NEGOTIATION

##### 15.305 [Amended]

■ 4. Amend section 15.305 by removing from paragraph (a)(5) “15.304(c)(3)(iii)” and adding “15.304(c)(3)(ii)” in its place.

#### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 52.209-6 [Amended]

■ 5. Amend section 52.209-6 by removing from the introductory paragraph “9.409(b)” and adding “9.409” in its place.

##### 52.212-5 [Amended]

■ 6. Amend section 52.212-5, in Alternate I, by removing “12.301(b)(4)” and adding “12.301(b)(4)(i)” in its place. [FR Doc. E9-28937 Filed 12-9-09; 8:45 am]

**BILLING CODE 6820-EP-S**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Chapter 1

[Docket FAR 2009-0002, Sequence 9]

#### Federal Acquisition Regulation; Federal Acquisition Circular 2005-38; Small Entity Compliance Guide

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005-38 which amend the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005-38 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Hada Flowers, FAR Secretariat, (202) 208-7282. For clarification of content, contact the analyst whose name appears in the table below.

#### LIST OF RULES IN FAC 2005-38

Item	Subject	FAR case	Analyst
I .....	Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees.	2009-017	Cundiff.
II .....	Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts ...	2006-026	Jackson.
III .....	Internet Protocol Version 6 (IPv6) .....	2005-041	Woodson.
IV .....	Federal Food Donation Act of 2008 (Pub. L. 110-247) .....	2008-017	Jackson.
V .....	Postretirement Benefits (PRB), FAS 106 .....	2006-021	Chambers.
VI .....	Travel Costs .....	2006-024	Chambers.
VII .....	Technical Amendments .....		

#### SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005-38 amends the FAR as specified below:

#### Item I—Revocation of Executive Order 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2009-017)

This final rule amends the FAR to delete FAR subpart 22.16 and the corresponding FAR clause at 52.222-39,

Notification of Employee Rights Concerning Payment of Union Dues or Fees, which implemented Executive Order 13201, of February 17, 2001, of the same title. Executive Order 13201 required contractors to post a notice informing employees of their rights concerning payment of union dues or fees and detailed that employees could not be required to join unions or maintain membership in unions to retain their jobs. Executive Order 13496, of January 30, 2009, Notification of Employee Rights under Federal Labor Laws, revoked Executive Order 13201.

**Item II—Governmentwide Commercial Purchase Card Restrictions for Treasury Offset Program Debts (FAR Case 2006–026)**

This final rule amends the FAR at parts 4, 8, 13, 16, 32, and 52 by restricting the use of the Governmentwide commercial purchase card as a method of payment for offerors with debt subject to the Treasury Offset Program (TOP). This final rule facilitates the collection of delinquent debts owed to the Government by requiring contracting officers to determine whether the Central Contractor Registration (CCR) database indicates that the contractor has delinquent debt that is subject to collection under the TOP. If a debt flag indicator is found in the CCR database, then the Governmentwide commercial purchase card shall not be authorized as a method of payment. The contracting officer is required to check for the debt flag indicator at the time of contract award or order issuance or placement. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) deleted the requirement to check CCR for the indicator before exercising an option. Purchases and orders at or below the micro-purchase threshold are exempt from verification in the CCR database as to whether the contractor has a debt flag indicator subject to collection under the TOP.

**Item III—Internet Protocol Version 6 (IPv6) (FAR Case 2005–041)**

This final rule adopts the proposed rule published in the **Federal Register** at

71 FR 50011, August 24, 2006, as a final rule with minor changes. This final rule amends FAR parts 7, 11, 12, and 39 to require Internet Protocol Version 6 (IPv6) compliant products be included in all new information technology (IT) procurements requiring Internet Protocol (IP).

IP is one of the primary mechanisms that define how and where information moves across networks. The widely-used IP industry standard is IP Version 4 (IPv4). The Office of Management and Budget (OMB) Memorandum M–05–22, dated August 2, 2005, requires all new IT procurements, to the maximum extent practicable, to include IPv6 compliant products and standards. In addition, OMB Memorandum M–05–22 provides guidance to agencies for transitioning to IPv6.

**Item IV—Federal Food Donation Act of 2008 (Pub. L. 110–247) (FAR Case 2008–017)**

This rule adopts as final, with no changes, the interim rule published in the **Federal Register** at 74 FR 11829 on March 19, 2009. This rule implements the Federal Food Donation Act of 2008 (Pub. L. 110–247), which encourages executive agencies and their contractors, in contracts for the provision, service, or sale of food, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

The contracting officer is required to insert the clause at FAR 52.226–6, Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States. Contractors would only be impacted if they decided to donate the excess food; they would bear all the costs of donating the excess food. The Act would extend to the Government and the contractor, when donating food, the same civil or criminal liability protection provided to donors of food under the Bill Emerson Good Samaritan Food Donation Act of 1996.

**Item V—Postretirement Benefits (PRB), FAS 106 (FAR Case 2006–021)**

Currently FAR 31.205–6(o) allows contractors to choose among three different accounting methods for PRB costs; pay-as-you-go (cash basis), terminal funding, and accrual basis using generally accepted accounting principles by applying Statement 106 of Financial Accounting Standards (FAS 106). The FAR also requires that any accrued PRB costs be paid to an insurer or trustee. This final rule amends the FAR to permit the use of Internal Revenue Code sections 419 and 419A contribution rules as an alternative method of determining the amount of accrued PRB costs on Government cost-based contracts.

**Item VI—Travel Costs (FAR Case 2006–024)**

This final rule amends the FAR to change the travel cost principle (FAR 31.205–46) to ensure a consistent application of the limitation on allowable contractor airfare costs. This rule applies the standard of the lowest fare available to the contractor. This rule takes notice that contractors frequently obtain fares that are lower than those available to the general public as a result of direct negotiation. The cost principle is clarified by removing the terms “coach or equivalent” and “standard” from the description of the classes of allowable fares, since these terms increasingly do not describe actual classes of airline service. Thus, even when a “coach” fare may be available, given the great variety of fares often available, the “coach” fare may not be the lowest fare available, in particular when a contractor has a negotiated agreement with a carrier.

**Item VII—Technical Amendments**

Editorial changes are made at FAR 6.302–2, 8.703, 15.305, 52.209–6, and 52.212–5.

Dated: November 30, 2009.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. E9–28939 Filed 12–9–09; 8:45 am]

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